

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARCHIBALD CUNNINGHAM,

No. C 14-3033-JSW

Plaintiff,

**ORDER GRANTING CITY AND
COUNTY OF SAN FRANCISCO'S
MOTION TO DISMISS**

v.

MARIA SCHOPP, et al.

(Docket No. 13)Defendants.

This matter comes before the Court on consideration of the motion to dismiss filed by the City and County of San Francisco (“the City”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and it finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing scheduled for October 10, 2014, and it HEREBY GRANTS the City’s motion.

BACKGROUND

This lawsuit is the latest in a series of lawsuits filed by Plaintiff, Archibald Cunningham (“Cunningham”), that arise out of a custody dispute with his ex-wife, Mary Wang (“Wang”). *See Cunningham v. Mahoney*, 10-cv-1182-JSW; *Cunningham v. Mahoney*, 10-cv-3211-JSW.

In brief, Cunningham claims that Wang, and her attorney, Maria Schopp (“Schopp”), presented a proposed order to Judge Patrick Mahoney (“Judge Mahoney”), which terminated a joint custody arrangement. Cunningham alleges that he did not receive an opportunity to submit his own proposed order or to challenge the proposed order Schopp submitted to Judge Mahoney. (Compl. Introduction at 2:11-2, ¶¶ 6, 25.) Cunningham has been unsuccessful in his

1 efforts to overturn that order and also has been unsuccessful in his efforts to regain joint custody
2 or visits with his daughter.

3 Cunningham also has been declared a vexatious litigant in state court and he contends
4 that this has deprived him meaningful access to the courts in his custody proceedings. (*See*
5 *generally* Compl. ¶¶ 53-79.) Cunningham also raises challenges to a case resolution program
6 that was instituted in the family law division of San Francisco Superior Court. (*Id.* ¶¶ 133-175.)
7 In addition, Cunningham filed lawsuit in San Francisco Superior Court, in which he asserted
8 many of the same claims he asserts in this case (the “State Court Litigation”). During the
9 course of that litigation, he was required to post security as a result of his status as a vexatious
10 litigant. Cunningham argues that he was represented by counsel in his civil rights case and
11 argues that the security requirement violates his constitutional rights. (*See, e.g., id.* ¶¶ 80-116.)

12 Cunningham asserts a number of claims for alleged violations of his constitutional rights
13 against Judge Mahoney and other San Francisco Superior Court judges (the “Judicial
14 Defendants”), Justice Stewart R. Pollak of the First District Court of Appeals, and California
15 Supreme Court Chief Justice Tani Gorre Cantil-Sakauye, Ms. Wang, Ms. Schopp. and they
16 City.

17 ANALYSIS

18 The City moves to dismiss the claims asserted against it, because Cunningham does not
19 include allegations against City employees, other than members of the City Attorneys’ office
20 who defended the State Court Litigation. Cunningham concedes that the Judicial Defendants
21 are not City employees. Although he argues he should be granted leave to amend to include
22 allegations that the Judicial Defendants receive supplemental salaries from the City,
23 Cunningham has not shown he has a good faith basis to assert that the Judicial Defendants are
24 City employees. Accordingly, the Court GRANTS, IN PART, the City’s motion on this basis.

25 With respect to Cunningham’s Section 1983 claims, the City’s liability is premised on
26 *Monell v. Dep’t of Social Servs.*, 436 U.S. 658 (1978). In order to state any of his Section 1983
27 claim against the City, Cunningham must show “(1) that he possessed a constitutional right of
28 which he was deprived; (2) that the [City] had a policy; (3) that the policy ‘amounts to

deliberate indifference' to [Cunningham's] constitutional right; and (4) that the policy is the 'moving force behind the constitutional violation.'" *Anderson v. Warner*, 451 F.3d 1063, 1070 (9th Cir. 2006) (quoting *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992) (in turn quoting *City of Canton v. Harris*, 489 U.S. 378, 389-91 (1989)). "There also must be a 'direct causal link' between the policy or custom and the injury," and Cunningham "must be able to demonstrate that the injury resulted from a 'permanent and well settled practice.'" (*Id.* (quoting *McDade v. West*, 223 F.3d 1135, 1141 (9th Cir. 2000) (internal quotations omitted))).

The Court has carefully considered the allegations in Cunningham's complaint, and it concludes that he fails to allege any facts showing that any of the alleged constitutional violations resulted from a City custom or policy. In his opposition and sur-reply, Cunningham argues he should be permitted to add claims based on attempts to enforce a judgment lien. The Court concludes that it would be futile to permit him to amend to include such claims. Accordingly, the Court grants the motion to dismiss for this reason as well.

Finally, the City moves to dismiss the state law claims on the basis that Cunningham failed to comply with the claims presentation requirement. A party cannot file an action for money or damages against a local public agency until a written claim has been filed with and rejected by the defendant agency. *See* Cal. Gov't Code §§ 905, 945.4, 950.2; *City of San Jose v. Superior Court*, 12 Cal. 3d 447, 454 (1974). These claim presentation requirements are a condition precedent to maintaining an action against local public entities and "failure to file a claim is fatal to the cause of action." *City of San Jose*, 12 Cal. 3d at 454; *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 627 (9th Cir. 1988). Cunningham fails to allege that he complied with the claims presentation requirement. Accordingly, the Court grants the motion to dismiss on this basis as well.¹

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¹ In light of these rulings, the Court does not reach the City's argument that Cunningham's claims are barred by the statute of limitations.

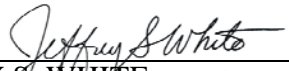
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CONCLUSION

For the foregoing reasons, the City's motion to dismiss is GRANTED, and the claims asserted against it are DISMISSED, WITH PREJUDICE. The Court finds there is no just reason to delay entry of judgment against the City. Accordingly, the Court shall enter a partial judgment pursuant to Federal Rule of Civil Procedure 54(b).

IT IS SO ORDERED.

Dated: September 12, 2014



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE